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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/837,076	04/18/2001	David D. Hadden	1004-001	8830
27820	7590	01/05/2006	EXAMINER	
WITHROW & TERRANOVA, P.L.L.C.			TARAE, CATHERINE MICHELLE	
P.O. BOX 1287			ART UNIT	PAPER NUMBER
CARY, NC 27512			3623	

DATE MAILED: 01/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

09/837,076

Applicant(s)

HADDEN ET AL.

Examiner

C. Michelle Tarae

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**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 20 December 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.

6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 4,6-9 and 31.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_

13. ☐ Other: \_\_\_\_\_.

*Susanna Diaz*  
**SUSANNA M. DIAZ**  
**PRIMARY EXAMINER**  
*AU 3623*

Continuation of 5. Applicant's reply has overcome the following rejection(s): 35 USC 102(a,e) rejections of claims 32 and 33; 37 CFR 1.75(c) claim objections of claims 32 and 33.

### **ADVISORY ACTION**

1. The following is an Advisory Action in response to the After Final Amendment and Request for Reconsideration received on December 2, 2005. The Request for Reconsideration has been considered, but does not place the application in condition for allowance.

In the Remarks, Applicant argues that Hollingsworth does not teach or disclose a measurable performance and a separately measurable skill. In response to the argument, Examiner respectfully disagrees. In col. 3, line 67-col. 4, line 1 and col. 7, lines 20-36, Hollingsworth discloses measuring an individual's skills by the certifications the individual has obtained. Certifications are used to represent the skills possessed by an individual. A certification table is used to maintain the number of certifications an individual has. Hollingsworth further discloses that the skills possessed by an individual may or may not be associated with critical or core competencies of the organization's business. Thus, Hollingsworth discloses measuring skills (and skill status) based on the certifications an individual has relating to the skills. Regarding job performance, in col. 9, lines 49-57, Hollingsworth discloses measuring job performance of an individual using a variety of factors: Enabling Objectives, Tasks and Procedures and References. The job performance measure (JPM) table maintains information about activities pertaining to Enabling Objectives, Tasks and Procedures and References, that are associated with the performance of a job. Therefore, Hollingsworth discloses measuring skills by the number of certifications an individual holds relating to the skills

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and measuring job performance using a variety of criteria such as activities relating to Enabling Objectives, Tasks and Procedures and References.

In conclusion, Examiner respectfully submits that Hollingsworth does teach a measurable performance and a separately measurable skill.

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Michelle Tarae (formerly, C. Michelle Colon) whose telephone number is 571-272-6727. The examiner can normally be reached Monday – Friday from 8:30am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz, can be reached at 571-272-6729.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any response to this action should be mailed to:

***Commissioner for Patents***

***P.O. Box 1450***

***Alexandria, VA 22313-1450***

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or faxed to:

703-872-9306 [Official Communications; including After Final  
communications labeled "Box AF"]

571-273-6727 [For status inquiries, draft communication, labeled  
"Proposed" or "Draft"]

Hand delivered responses should be brought to:

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cmt

December 28, 2005

  
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